

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
LINDA KAREN TANNER,)	CASE NO. 07-20211-jpk
)	Chapter 7
Debtor.)	
*****)	
STACIA L. YOON,)	
)	
Plaintiff,)	
)	
V.)	ADVERSARY NO. 07-2126
)	
GILBERT TANNER,)	
)	
Defendant.)	

JUDGMENT

This Adversary Proceeding was commenced by Complaint filed on December 6, 2007. On December 28, 2007, the Clerk docketed a one page document, deemed by the Court to be the Defendant's answer to the complaint. This document denied the material averments of the complaint. The Court entered an order on January 28, 2008 which scheduled a preliminary pre-trial conference in this case. The record establishes that this order was mailed to the defendant, and there is no indication in the record that the mailing was returned to the Court. Pursuant to the January 28, 2008 Order, a preliminary pre-trial conference was held on February 15, 2008, at which the plaintiff appeared but at which the defendant failed to appear. The Court entered an Order on March 3, 2008 which scheduled another preliminary pre-trial conference for March 28, 2008 and stated that Judgment would be entered for the plaintiff against the defendant unless the defendant appeared at the March 28th hearing and showed cause as to why the sanction of entry of the default judgment should not be imposed upon him for his failure to attend a scheduled preliminary pre-trial conference. The Court's record establishes that this Order was sent to the defendant, and that the mailing was not returned to

the Court. Another hearing was held on March 28, 2008, pursuant to the Order entered on March 3, 2008. Again, the plaintiff appeared but the defendant failed to do so. That Order noted that a letter was filed in Case No. 07-20211 with respect to the hearing set for March 28, 2008, which, under the apparent signature of Linda K. Tanner, stated that “due to health issues, Mr. Tanner and I will not be able to attend the hearing on March 28, 2008.” The Court entered an Order dated April 11, 2008 on April 14, 2008, which noted the receipt of this letter and provided the defendant one more opportunity to appear before the Court to explain why a judgment by default should not be entered against him on the plaintiff’s complaint, as a sanction for his failure to attend the February 15, 2008 preliminary pre-trial conference. On May 22, 2008, the Clerk docketed as record entry No. 14 correspondence from Gilbert Tanner which asserted he did not receive any part of a tax refund of Linda Tanner, stated that he would not be attending any hearings because he was not able to do so due to asserted serious breathing problems, and concluded with the statement: “please do not contact me again because I had nothing to do with Linda’s financial problems.” The Court read this letter into the record at the hearing held May 23, 2008, at which the plaintiff appeared by Seth Buitendorp, and at which the defendant again failed to appear.

While the Court notes that health problems may impair or impede a persons’ ability to attend a Court proceeding, the conduct evidenced by Gilbert Tanner in relation of this case evidences a total disregard for Court procedures and Court orders. A person intent on conscientiously defending against an action of this nature would be expected to call the court to seek to make alternative arrangements for a personal appearance, and nothing of that sort has ever happened in this case. The record establishes that Gilbert Tanner is essentially “blown off” the Court and the Plaintiff’s action. As a result, the Court finds that the utilization of the provisions of Fed.R.Bankr.P 7016/Fed.R.Civ.P. 16(f)/Fed.R.Civ.P. 37(b)(2)(C) is appropriate

and that judgment by default should be entered against the defendant pursuant to those provisions.

Due to the complicated nature of computing pre-judgment interest, the Court declines to award the Plaintiff pre-judgment interest for the relatively limited period of time for which that award would apply.

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have and recover from the defendant, Gilbert Tanner, Judgment in the amount of \$3328.33, plus recovery of costs in the amount of \$250.00, for a total Judgment of \$3578.33.

Dated at Hammond, Indiana on June 4, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

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Attorneys of record